## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

MICHAEL McMULLEN 

v. 

§ CIVIL ACTION NO. 6:09cv258

WARDEN WHEAT, ET AL. 

§

## MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Plaintiff Michael McMullen, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

McMullen has filed a motion asking that his lawsuit be dismissed. On October 2, 2009, the Magistrate Judge issued a Report recommending that this motion be granted and that the lawsuit be dismissed without prejudice. McMullen received a copy of this Report on October 16, 2009, but has filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. <u>Douglass v. United Services Automobile Association</u>, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge.

Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion to dismiss his lawsuit (docket no. 8) is GRANTED. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice on the motion of the Plaintiff. Finally, it is

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

So ORDERED and SIGNED this 12th day of November, 2009.

LEONARD DAVIS

UNITED STATES DISTRICT JUDGE